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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,653	06/22/2001	James E. Fox	018760.23	7190
21878	7590	07/01/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP 214 N. TRYON STREET HEARST TOWER, 47TH FLOOR CHARLOTTE, NC 28202			FAISON, VERONICA F	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/887,653

Applicant(s)

FOX ET AL.

Examiner

Veronica F. Faison

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-16 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 10 and 16 is/are rejected.
- 7) ☒ Claim(s) 2-7, 11-15, 20-21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Susan Jackson on 6-16-04.

The application has been amended as follows:

IN THE CLAIMS:

Claim 1, line 6, delete "at least 1:1" and insert --of about 1:1 to about 1:2.5--.

Claim 19, line 6, delete "at least 1:1" and insert --of about 1:1 to about 1:2.5--.

Cancel claim 9.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 10 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10 and 16 recite the phrase "a minimum ratio of pigment to polypropylene glycol of about". The Examiner considers this phrase to be indefinite, because one cannot identify a definite range of the ratio, for example the word minimum

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could suggest that the pigment is present in an amount greater than the propylene glycol. The Examiner suggests deleting the word minimum.

Double Patenting

Applicant is advised that should claims 1 and 2 be found allowable, claim 19 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When claims in an application are duplicates or else are so close in content that they cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The Examiner suggests deleting claim 19 and making claim 20 dependent from claim 2.

Allowable Subject Matter

Claims 2-7, 11-15, 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2-7, 11-15, 20 and 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The Examiner would like to note that a call was made to Susan Jackson on June 24, 2004 for a secondary examiner's amendment concerning the subject matter above, however Atty. Jackson stated that it is preferred that the rejection be made to allow time to contact Applicants.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Veronica F. Faison whose telephone number is 571-272-1366. The examiner can normally be reached on Monday-Thursday and alternate Fridays 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



VFF

June 28, 2004